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The Honorable Edward F. Shea

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Attorneys for Newmont USA Limited and
Dawn Mining Company

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

DONNELLY R. VILLEGAS, an
enrolled member of the Spokane Tribe
of Indians;

Plaintiff,

v.

UNITED STATES OF AMERICA; ET
AL.,

Defendants.

CASE NO. CV-12-001-EFS

DEFENDANTS NEWMONT USA
LIMITED'S AND DAWN MINING
COMPANY'S MEMORANDUM IN
SUPPORT OF JOINT MOTION TO
QUASH SUBPOENA

1 Defendants Newmont USA Limited (“Newmont”), and Dawn Mining
2 Company LLC (“Dawn”), submit the following Memorandum of Points and
3 Authorities in Support of their Joint Motion to Quash Plaintiff’s Subpoena to
4 Produce Documents issued to the Garden City Group, Inc. Counsel for Defendants
5 Newmont and Dawn have conferred with counsel for Plaintiff, who opposes
6 Defendants’ Motion.
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9 **I. Background**

10 On April 19, 2012, Plaintiff’s counsel mailed a Notice of Records
11 Deposition (the “Notice”) and subpoena *deuces tecum* to the Garden City Group,
12 Inc. (“Garden City”), a non-party who is the administrator of a class settlement in
13 unrelated litigation, *Cobell v. Salazar*, No. 1:96 CV 01285(TFH) (D.D.C.). *See*
14 Exhibit A, Notice of Records Deposition and Subpoena. The Notice and subpoena
15 were headed with the caption for the instant case, *Villegas v. United States*, No.
16 CV-12-001-EFS (E.D. Wash. 2012). At the time of mailing, the subpoena was
17 unsigned and undated. A signed subpoena was later received by Garden City,
18 dated April 24, 2012. The subpoena commands Garden City to produce specific
19 categories of documents on May 1, 2012, at the offices of Galanda Broadman
20 PLLC, in Seattle, Washington. The materials requested include a large number of
21 documents related to the *Cobel v. Salazar* litigation, including settlement materials
22 provided to members of the class in that litigation, as well as court filings. At
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1 Garden City's request, Plaintiff agreed to extend the time for Garden City to
2 respond to the subpoena through May 14, 2012.

3 4 **II. Argument**

5 The timing and sequence of discovery are governed by Federal Rule of Civil
6 Procedure 26(d)(1), which provides, in part:

7
8 A party may not seek discovery from any source before the
9 parties have conferred as required by Rule 26(f), except in a
10 proceeding exempted from initial disclosure under under Rule
11 26(a)(1)(B), or when authorized by these rules, by stipulation,
or by court order.

12 The parties have not yet conferred pursuant to Federal Rule of Civil
13 Procedure Rule 26(f), or developed a discovery plan. Aside from Plaintiff's claim
14 against the United States under the Administrative Procedure Act, the exceptions
15 in Rule 26(d)(1) allowing early discovery are not applicable. Plaintiff filed its
16 Complaint on January 16, 2012. On March 15, 2012, Newmont filed a Motion to
17 Dismiss under Rule 12(b)(6) (ECF No. 38). Dawn filed a Motion to Dismiss for
18 Lack of Subject Matter Jurisdiction and Failure to Join an Indispensable Party on
19 the same day (ECF No. 41). Plaintiff filed oppositions on April 12, and
20 Defendants filed replies on April 30. The United States filed a Motion to Dismiss
21 on March 30, 2012 (ECF No. 61), arguing, *inter alia*, that this Court lacks
22 jurisdiction over Plaintiff's claims. Plaintiff sought, and was granted, an extension
23 of time to file an opposition to the United States' Motion to Dismiss up to and
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1 including June 26, 2012. Newmont's, Dawn's and the United States' motions to
 2 dismiss are pending and the Court has not yet made a determination on whether it
 3 has jurisdiction over the Plaintiff's claims.
 4

5 Neither Newmont, nor Dawn, nor the United States have filed an answer,
 6 and the case is not yet at issue. Plaintiff has not moved for an order allowing
 7 premature discovery, pursuant to Federal Rule 26(d). Plaintiff should not be
 8 permitted to violate the Federal Rules of Civil Procedure.
 9

10 WHEREFORE, Defendants Newmont and Dawn respectfully request the
 11 court to enter an order granting their Motion to Quash Plaintiff's Subpoena, and
 12 granting such further relief as the Court deems just and proper.
 13

14 Respectfully submitted this 30th day of April, 2012.
 15

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I hereby further certify that on this day I caused a true and correct copy of the foregoing to be served, as indicated, upon the following non-CM/ECF participants:

No manual recipients

DATED this 30th day of April, 2012.

s/ SCOTT W. HARDT

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